C. Investment Advisory Arrangements. As is customary for business development companies, ECMC also acts as the investment adviser to each Partnership pursuant to an investment advisory agreement between ECMC and each Partnership. Under each such agreement, ECMC is responsible for the identification of all investments to be made by the Partnerships. A more detailed description of these investment advisory arrangements is set forth at pages 91-95 of the prospectus included in Exhibit C.

III. Relevant Securities Law Requirements

As discussed above, the Partnerships are regulated as "business development companies" under the 1940 Act. In addition, the public offerings of Units of limited partnership interest in the Partnerships are subject to regulation under state "blue sky" securities laws. As a result, the Partnerships are subject to certain state and federal securities regulatory

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27.(...continued)
in media companies and, therefore, did not include explicit provisions in their Partnership Agreements relating to the alien status of limited partners. However, these Partnerships now have opportunities to make media investments that would appear to be consistent with their investment objective and policies. As discussed more fully below in Part V, ECMC submits that the limited partners of such Partnerships are sufficiently insulated to warrant the relief requested herein.

requirements which serve fundamental investor protection objectives. Pursuant to these requirements, the Partnership Agreements permit the limited partners of the Partnerships to elect and remove the general partners.[28] However, as discussed in Section IV, the ability of the limited partners to initiate the exercise of these voting rights, while consistent with the requirements of applicable securities laws, is limited.

A. The 1940 Act. The statutory scheme of the 1940 Act generally contemplates that investment companies will be organized in either a corporate or a trust form. The partnership structure does not fit neatly into the original statutory scheme. The legislative history of the 1980 amendments to the 1940 Act, which added the provisions concerning business development companies, recognized this fact:

> Virtually all registered investment companies are corporations or Massachusetts business trusts. A few registered investment companies

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28. The Commission has suggested that limited partners should have rights to vote on the election of new general partners provided that such vote is subject to veto by the existing general partner. See Attribution Reconsideration Order, supra, 58 Rad. Reg 2d (P&F) at 619. The Commission also has suggested that the right of limited partners to remove a general partner should be limited to certain extraordinary situations. See Second Attribution Reconsideration Order, supra, 61 Rad. Reg. 2d (P&F) at 743-44.

> have been organized as limited partnerships and received orders from the [SEC] providing appropriate exemptive relief from certain provisions of the [1940 Act] . . . The Committee understands that the [SEC], presently, does not favor the issuance of such orders unless an applicant can make a compelling case that limited partnership status is essential to its proposed operations. In this regard, the Commission apparently believes that the corporate form provides more certain rights and remedies to investors in a publicly-held investment pool. Whether a business development company should be organized as a corporation or a limited partnership may depend upon whether subchapter M [of the Internal Revenue Code] is amended to provide pass-through tax treatment for business development companies. Thus, this legislation explicitly recognizes the possibility that a business development company could be organized as a limited partnership.[29]

Subchapter M of the Internal Revenue Code, which exempts qualifying registered investment companies from taxation at the corporate (or similar entity) level, provides specific pass-through tax treatment for business development companies only if they satisfy certain diversification requirements. The Partnerships, which are designed to permit investments in a relatively limited number of private companies, are unable to rely on Subchapter M.[30] Accordingly, almost all business

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29. H.R. Rep. No. 1341, 96th Cong., 2d Sess., at 34 n.5.

30. 26 U.S.C. §§ 851 et. seq. For example, subchapter M of the Internal Revenue Code imposes certain diversification requirements on investment companies that could severely inhibit the Partnerships' ability to make bridge loans.

development companies, including the Partnerships, are organized as limited partnerships to qualify for "pass-through" tax treatment.

The 1980 amendments added Sections 55 through 65 to the 1940 Act and made certain other provisions of the 1940 Act, including Section 15(a), applicable to business development companies pursuant to Section 59 of the 1980 Act. Section 15(a) makes it unlawful for any person to act as investment adviser of an investment company, except pursuant to a written contract that has been approved by a vote of a majority of the outstanding voting securities of such investment company. The contract must describe precisely the compensation to be paid to the investment adviser. In addition, the contract cannot continue in effect for more than two years unless its continuance is approved at least annually by the board of directors or a vote of the majority of outstanding voting securities. The contract also must provide that it can be terminated at any time without payment of a penalty by the board of directors or the holders of a majority of the outstanding voting securities of the investment company.[31] Section 36(b) of the 1940 Act, which is also applicable to business development companies, places on the investment

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31. 15 U.S.C. § 80a-15(a)(1)-(3).

adviser a fiduciary duty not to receive excessive compensation.[32]

In the case of limited partnerships, such as the Partnerships, the investment adviser and the managing general partner are identical: ECMC serves in both capacities. The relationship between ECMC and each Partnership under the Partnership Agreements is deemed to be an advisory relationship because of the authority vested in the managing general partner with respect to Partnership investments. This means that both the separate investment advisory agreements described above and the Partnership Agreements must comport with the annual approval requirements of Section 15(a) of the 1940 Act. Since the Partnership Agreements are deemed to be advisory contracts, the limited partners have the right initially to approve or disapprove any proposed management arrangements with the managing general partner,[33] ECMC,

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32. 15 U.S.C. § 80a-36(b).

33. Section 7.3.A(3) of each Partnership Agreement. For the Equitable Capital Partners I Partnerships, these arrangements were approved initially by the then sole owner of Units, ECMC. Recently, the SEC has suggested that investment companies, such as the Partnerships, that do not hold annual meetings should undertake to resubmit advisory arrangements to the shareholders for approval within one year of commencement of operations. ECMC is uncertain whether the SEC will take this position with respect
(continued...)

and to terminate any such existing arrangement with ECMC, by, among other things, removing it as managing general partner, in accordance with Section 15 of the 1940 Act.

The right of limited partners to vote upon the removal of general partners, and thereby effectuate the policies of Section 15, has been implemented, in the case of business development companies such as the Partnerships, through the SEC's exemptive order process. As discussed in Part II.B, above, a majority of the general partners of a business development company organized as a limited partnership must be persons who are not "interested persons" of the partnership. The definition of "interested person" in Section 2(a)(19) of the 1940 Act provides that an "interested person" includes an investment adviser to a fund and an "affiliated person" of such person. Section 2(a)(3)(D) of the 1940 Act defines an affiliated person to include a partner. Therefore, persons selected to serve as independent general partners become "interested persons" simply because they are co-partners of ECMC. As a result, the requirement that a majority of the general partners be disinterested technically cannot be satisfied. To resolve this

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33.(...continued)
to the Equitable Capital Partners II Partnerships, which are in registration.

statutory problem, the SEC has exercised its authority under Section 6(c) of the 1940 Act to issue exemptive orders that permit persons without other affiliations to the partnership to serve as "disinterested" independent general partners. Accordingly, every business development company organized as a limited partnership, including the Partnerships, must seek an exemptive order from the SEC before commencing operations.[34] Indeed, the staff of the SEC takes the position that it will not declare effective a registration statement of a business development company until such an exemptive order is issued.

Section 6(c) authorizes the SEC to grant exemptive orders on terms and conditions deemed "necessary or appropriate in the public interest and consistent with

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34. See, e.g., In the Matter of Equitable Capital Partners, L.P., et al., Investment Company Act Release No. 16444 (June 21, 1988) (issued with respect to the Equitable Capital Partners I Partnerships; the order and related notice of application are attached as Exhibit E); In the Matter of ML-Lee Acquisition Fund II, L.P., et al., Investment Company Act Release No. 17127 (September 6, 1989); In the Matter of ML-Venture Partners II, L.P., Investment Company Act Release No. 15652 (March 30, 1987); In the Matter of ML-Lee Acquisition Fund, L.P., Investment Company Act Release No. 15918 (August 12, 1987); In the Matter of ML-Venture Partners I, L.P., et al., Investment Company Act Release No. 12601 (August 12, 1982). An application for similar exemptive relief for the Equitable Capital Partners II Partnerships is pending.

the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]."[35] It has been the position of the staff of the SEC that, as a condition to the granting of the type of exemptive order referred to above, a limited partnership regulated as a "business development company" must undertake that the limited partners will be afforded all of the voting rights required by the 1940 Act. The SEC staff has recently stated in a letter to counsel for the Partnerships that it is attempting to "standardize the conditions to which [the staff] believes a business development company should agree" in order to receive such an exemptive order. A copy of the letter is attached as Exhibit A. The standard conditions specifically include a statement that "the Limited Partners will be afforded all of the voting rights required by the [1940] Act." Such a statement was made as a condition to the order for the Equitable Capital Partners I Partnerships and will be made as a condition to the requested order for the Equitable Capital Partners II Partnerships. Through the mechanism of granting exemptive orders upon the applicants' adoption of this specific condition with respect to voting rights, the SEC has specifically ensured that the limited partners of a

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35. 15 U.S.C. § 80a-6(c).

business development company organized as a limited partnership in a jurisdiction such as Delaware, which does not require annual meetings of limited partners, will have the ability to make determinations with respect to the investment advisory arrangements of such company contained in a partnership agreement.

The effect of voting to remove the managing general partner is to terminate the investment management arrangements with such partner, as they are implemented through the provisions of the partnership agreement. Accordingly, as noted above in Part II.B, the limited partners of each Partnership have the power to propose, and to approve or disapprove, the election or removal of general partners.[36] In addition, a general partner can be removed by a failure to be re-elected at a special meeting of the limited partners held for such purpose or by written consent of a majority in interest of the limited partners.[37] A special meeting must be held upon the request of limited partners holding at least 10% in interest in a Partnership.[38] The result of these provisions,

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36. Section 7.3.A(1) of each Partnership Agreement.

37. Section 6.3.A of each Partnership Agreement.

38. This limited right is patterned after the rights given to holders of interests in business trusts

(continued...)

consistent with the policies of the 1940 Act, is to allow the limited partners to initiate a change in investment advisory arrangements even if the independent general partners have not proposed to do so. In addition, since Section 15(a) requires that a new advisory contract must be approved by a vote of a majority of the outstanding voting securities, the limited partners must, under the 1940 Act, have the power to vote on the election of any new managing general partner providing the investment management arrangements for the Partnership.

B. State "Blue Sky" Requirements. In addition to the regulatory requirements applicable to the Partnerships under the 1940 Act, the Partnerships are subject to the state securities or "blue sky" requirements of every state in which Units of the Partnerships are offered for sale or sold. MLPF&S and the Partnerships registered Units of the Equitable Capital Partners I Partnerships for sale in all 50 states, and it is expected that MLPF&S will also seek to register Units of the Equitable Capital Partners II Partnerships in all 50 states.

As set forth in the Declaration of Ellen Lieberman (Attachment 1 to this Petition), who is counsel

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38.(...continued)
regulated under the 1940 Act. See Section 16(c) of the 1940 Act, 15 U.S.C. § 80a-16(c).

to Debevoise & Plimpton and has extensive experience in state securities law matters, Ms. Lieberman believes that the Partnerships would not be permitted to offer or sell Units to the public in a number of important states, such as California, Michigan, Minnesota, Ohio and Texas, unless their Partnership Agreements permit a majority in interest of limited partners to elect or remove the general partners.

As described in more detail in such Declaration, at least 39 states apply guidelines for publicly offered real estate partnerships (the "Guidelines") developed by the North American Securities Administrators Association, Inc. to public offerings of limited partnerships interests generally. Subdivisions 2 and 3 of Article VII, Section B of the Guidelines set forth "democracy" standards, which require that a majority of limited partners be permitted to vote on the election or removal of a general partner, without the concurrence of a general partner. State securities administrators in at least 15 states, including California, Massachusetts, and Texas, have said that they would apply these democracy provisions in determining whether to permit the public offering of limited partnership interests in a business development company, such as the Partnerships.

Although administrators may waive strict compliance with the Guidelines under certain circumstances, Ms. Lieberman's experience is that democracy provisions are of particular concern to state securities officials and that waiver of these provisions is particularly difficult to obtain in practice. In fact, we are informed that a number of states specifically requested compliance with the Guidelines and in some instances with the democracy provisions in connection with the offering of the Units of the Equitable Capital Partners I Partnerships.

On the basis of her experience in the area, as well as recent discussions with state securities officials, Ms. Lieberman believes that if the Equitable Capital Partners II Partnerships did not include the voting rights now given to the limited partners under the Partnership Agreements, important states, such as California, Michigan, Minnesota, Ohio and Texas, would not permit the public offering of the Units.[39]

IV. The Structure and Organization of the Partnerships Are Consistent With Applicable FCC Policies

The structure and organization of the Partnerships ensure that limited partners cannot be involved in

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39. See Attachment 1, at p. 4.

the management or operation of the Partnerships. In addition, in the case of the Equitable Capital Partners II Partnerships, the Partnership Agreements contain explicit restrictions on the activities of limited partners that -- in accordance with the Commission's insulation policies -- insulate them from involvement in and prevent them from communicating about the Partnerships' media investments.[40] Accordingly, the ruling requested in this Petition would be fully consistent with the Commission's policies for calculating alien ownership in accordance with Section 310(b) of the Communications Act.

A. The Requested Ruling Would Recognize the Restricted Role of the Limited Partners. ECMC submits that the requested ruling simply seeks a pragmatic application by the Commission of its insulation policies to widely held public limited partnerships regulated under the 1940 Act. The requested ruling would not, in any way, undermine the fundamental intent of the Commission's policies, which is to ensure that only investors lacking the ability to influence the operations of a Commission licensee be permitted to use the multiplier. The limited partners of the Partnerships clearly lack such ability. Accordingly, for the Commission to apply its insulation

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40. See supra, Part II.B.

policies to a widely-held, public investment vehicle would create absolutely no threat of alien control of, or even involvement in, U.S. media outlets. The Commission has explicitly recognized that limited partnerships may develop their own, appropriate forms of insulation.[41]

Initially, it should be noted that the Commission's decisions setting forth its policy regarding the proper insulation of limited partners consider only the experiences of closely-held partnerships.[42] ECMC submits that the rote application of the policy to widely-held public limited partnerships such as the Partnerships is inequitable and unnecessary to effectuate the policies of Section 310(b). The ruling requested by ECMC would

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41. E.g., Wilner & Scheiner Ruling, supra, 58 Rad. Reg. 2d (P&F) at 540 n.48 ("the licensee has flexibility in the manner in which it chooses to demonstrate insulation"); Attribution Reconsideration Order, supra, 58 Rad. Reg. 2d (P&F) at 619 ("[The Commission's insulation guidelines] serve only to indicate the type of insulation the Commission will consider . . . .").

42. See cases cited in Wilner & Scheiner Ruling, supra, 58 Rad. Reg. 2d (P&F) at 533 n.10 (Anax Broadcasting, Inc., 87 F.C.C.2d 483 (1981) (one limited partner); Central Texas Broadcasting Co., 90 F.C.C.2d 583 (1982) (three limited partners); Greater Wichita Telecasting, Inc., 90 F.C.C.2d 1046, recon. denied, 92 F.C.C.2d 780 (1982) (sixteen limited partners); Merrimack Valley Broadcasting, Inc., 92 F.C.C.2d 506 (1982) (two limited partners); Wometco Enterprises, Inc., 57 Rad. Reg. 2d (P&F) 1033 (1985) (25 limited partners)).

equalize the treatment of functionally equivalent public investment vehicles subject to the 1940 Act, whether organized as widely-held corporations or as widely-held limited partnerships.[43]

The Partnerships are structured and organized in a way that makes it virtually impossible for the limited partners to have any involvement in a media outlet in which a Partnership invests. In short, the limited partners are properly insulated and should be treated as such. Moreover, aliens, who hold only a small percentage of the outstanding Units, are particularly unable to influence any aspect of the management or operation of a Partnership.

Any involvement by the Partnerships in any media enterprise is controlled entirely by ECMC, a U.S. corporation, and the independent general partners, all of whom are U.S. citizens. As business development companies, the Partnerships must invest at least 70% of their assets in companies to which they make available "significant managerial assistance."[44] (Such companies may include media

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43. A favorable ruling from the Commission would not open the floodgates to applications for relief from all limited partnerships investing in media companies. There currently are few such widely-held public limited partnerships registered under the 1940 Act.

44. See 15 U.S.C. §§ 80a-2(a)(46) and (47), and §§ 80a-55(a).

companies.) Under the Partnership Agreements, ECMC, as managing general partner, has exclusive authority to provide (or arrange for the provision of) such managerial assistance.[45] The limited partners have absolutely no role in, or influence over, such activities.

Under the 1940 Act, a business development company provides "significant managerial assistance" if it either offers "significant guidance and counsel"[46] to a portfolio company or exerts a "controlling influence" over such company's management or policies.[47] As disclosed in their respective prospectuses, the Partnerships provide only "significant guidance and counsel"; they do not seek to exert a "controlling influence" over any company in which they invest.[48] In the case of the Equitable Capital Partners I Partnerships, ECMC has provided such "significant guidance and counsel" by consulting periodically with the management of companies in which the Partnerships have invested regarding business decisions, operations, and corporate policies and strategies. ECMC also relies on members of an investor group (for example, the sponsor of

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45. Section 5.2B of each Partnership Agreement.

46. 15 U.S.C. § 80a-2(a)(47)(A).

47. 15 U.S.C. § 80a-2(a)(47)(B).

48. See, e.g., page 35 of Exhibit D.

a leveraged transaction) to provide significant managerial assistance. In some cases, ECMC has placed one of its officers or employees on the board of directors of a portfolio company.[49] ECMC will provide similar managerial assistance with respect to investments by the Equitable Capital Partners II Partnerships. It has not, and will not, place a limited partner or a representative of a limited partner on the board of any company in which a Partnership invests.

The voting rights that federal law and state "blue sky" laws require be given to the limited partners do not defeat a showing that they are adequately insulated. As noted above in Part III.A, although the 1940 Act and state "blue sky" regulations require that the limited partners have voting rights pertaining to the election or removal of general partners, because the Partnerships have no annual meetings, such a vote could occur only at a special meeting. For such a meeting to be called, limited partners holding at least 10% of the outstanding Units would need to request that a special meeting be held. In the case of the Equitable Capital Partners I Partnerships, persons holding 50,568 Units

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49. ECMC will place only U.S. citizens on the boards of any companies that hold Commission licenses (or on companies controlling such licensees).

(more than four times the number of Units held by aliens) would have to join together simply to call such a meeting.

Even if such a special meeting were called, an affirmative vote of a majority in interest of the limited partners is required to remove a general partner, as noted above in Part III.A. In the case of the Equitable Capital Partners I Partnerships, removal of a general partner would require the affirmative vote of persons holding more than 252,842 Units -- more than twenty-two times the number of Units held by aliens. The small number of alien limited partners would be particularly unable to use these rights to exert any influence over the Partnerships' management or operation. The Partnerships simply do not present the possibility for a limited partner to influence or control management or operational decisions by using, or threatening to use, election and removal voting rights.[50]

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50. As noted in Part II.A, ECMC expects that the number of limited partners and the number of alien limited partners in the Equitable Capital Partners II Partnerships will be proportionally similar to the numbers in the Equitable Capital Partners I Partnerships. In addition, as noted above in Part III.A, under the Partnership Agreements, ECMC must consent to the admission of any additional or substitute limited partners. ECMC undertakes that it will use this authority to ensure that aliens do not acquire significant additional amounts of outstanding Units.

There also is virtually no possibility that a limited partner, or a small group of limited partners, could quickly accumulate a sufficient number of Units to be able to use the limited voting rights in a way that would be inconsistent with the Commission's insulation policies. For federal tax law reasons, there is not, and will not be, any public trading market for Units.[51] Moreover, the managing general partner has absolute discretion to approve or disapprove admissions of substituted limited partners.[52] Only persons admitted as substituted limited partners have voting rights.

B. The Requested Ruling Would Accommodate Other Important Regulatory Policies. The requested ruling recognizes that the Commission can permit alien interests in the Partnerships in a manner that will accommodate the fundamental policies of the 1940 Act and state securities laws without diminishing important policies of the Communications Act. Granting the ruling would be consistent with ample prior Commission precedent that has accommodated competing federal and state interests. In carrying out its responsibilities under the Communications Act in the past, the Commission has sought

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51. Sections 8.1G and 8.1H of each Partnership Agreement.

52. Section 8.3 of each Partnership Agreement.

to accommodate, wherever possible, important competing federal policies.[53] In addition, the Commission is obligated to abide by the "principle of fair accommodation between state and federal authority where the powers of the two intersect."[54]

In this instance, accommodating its policies to grant the ruling will further the Commission's stated goal of seeking to "facilitate the infusion of capital into broadcasting" and to increase the diversity of sources of such capital by "distinguishing between influential and non-influential ownership interests."[55] Such a result also would be consistent with the desires of Congress, which, in enacting the "business development company" provisions of the 1940 Act, sought to "enhance the ability of [business development companies] to raise and rechannel funds to small and unseasoned companies which are unable to enter the capital markets or obtain financing through conventional sources."[56] For the many reasons noted

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53. E.g., Tender Offers and Proxy Contests, 59 Rad. Reg. 2d (P&F) 1536, 1540 (1986).

54. Radio Station WOW v. Johnson, 326 U.S. 120, 132 (1945).

55. E.g., Attribution Reconsideration Order, supra, 58 Rad. Reg. 2d (P&F) at 613.

56. 126 Cong. Rec. S27266 (daily ed. Sept. 25, 1980) (statement of Sen. Sarbanes).

above, the requested ruling would accomplish these benefits without adversely affecting congressional and Commission policies to limit alien ownership and control of media outlets.

V. The Requested Ruling Should Apply to All Four Partnerships

The limited partners of all four Partnerships are well insulated, for the many reasons discussed above. As noted previously, the Partnership Agreements of the Equitable Capital Partners I Partnerships do not contain certain provisions that explicitly restrict certain activities of limited partners with respect to media businesses in which the Partnerships might invest. ECMC submits, however, that the elaborate structural and organizational safeguards inherent in all four of the Partnerships prevent the limited partners of any one of them from being materially involved in the management or operation of a Partnership's media businesses. Moreover, the Partnerships are designed to operate in tandem with respect to portfolio investments and are (or, in the case of the Equitable Capital Partners II Partnerships, will be) severely limited by applicable SEC exemptive orders in their ability to take non-parallel actions with respect to portfolio investments. Accordingly, the limited partners

of the Equitable Capital Partners I Partnerships will not be able to take any action with respect to a media investment that the Equitable Capital Partners II Partnership cannot take. Accordingly, ECMC requests that the ruling apply to all four Partnerships.

Should the Commission determine, however, that the specific insulating provisions included in the Partnership Agreements of the Equitable Capital Partners II Partnerships are necessary for proper insulation of any alien limited partners, ECMC requests that the Commission waive the application of any such requirement to the Equitable Capital Partners I Partnerships. At this point, Equitable Capital believes that it is virtually impossible to obtain the enormous number of consents necessary to amend the Partnership Agreements of the Equitable Capital Partners I Partnerships solely to add specific additional insulating provisions, because such an amendment would require the consent of the holders of a majority of the outstanding Units.

VI. Conclusion

For all of the foregoing reasons, ECMC, by its attorneys, respectfully requests that the Commission declare that the limited partners of each Partnership are adequately insulated from involvement in the management or

operation of such Partnership's media investments so that the "multiplier" can be used in order to determine compliance by each Partnership with the alien ownership limitations contained in Section 310(b) of the Communications Act.

DEBEVOISE & PLIMPTON

By: Marcia L. MacHarg
Marcia L. MacHarg

555 13th Street, N.W.
Suite 1100E
Washington, D.C. 20004
(202) 383-8000

Counsel to Equitable Capital Management Corporation

Dated: June 1, 1990

DECLARATION

1. I, Ellen Lieberman, am Counsel to the law firm of Debevoise & Plimpton. I have been a practicing attorney specializing in the field of securities law since 1981. I am admitted to practice law in the State of New York.

2. I have had extensive detailed experience in 50-state applications for registration of public offerings of securities (including both real estate and non-real estate limited partnership offerings) in which state securities administrators have applied the guidelines (the "Guidelines") developed by the North American Securities Administrators Association, Inc. (the "NASAA") for publicly-offered real estate partnerships. I have prepared and submitted to state securities administrators cross-reference sheets detailing compliance of particular offerings with the provisions of the Guidelines. I have also received numerous oral and written comments from securities administrators in various states relating to compliance with various provisions of the Guidelines, and have responded in detail thereto in connection with many different offerings. I have also been for several years a member of the Subcommittee on Real Estate Programs of the Committee on State Regulation of Securities of the American Bar Association (the "Subcommittee on Real Estate Programs"), where the principal focus has been and continues to be the Guidelines.

3. Equitable Capital Management Corporation, in its capacity as Managing General Partner of Equitable Capital Partners II, L.P. and Equitable Capital Partners (Retirement Fund) II, L.P. (the "Equitable Capital Partners II Partnerships"), is submitting by its attorneys, Debevoise & Plimpton, a Request for Declaratory Ruling (the "Petition") to the Federal Communications Commission (the "Commission"). The Petition seeks a ruling that the limited partners of the Equitable Capital Partners II Partnerships are adequately insulated from material involvement in the operation of the management of the Equitable Capital Partners II Partnerships and that the "multiplier" can be used to calculate the ownership interest of alien limited partners. The Petition also requests that the Commission make a similar determination with respect to Equitable Capital Partners, L.P. and Equitable Capital Partners (Retirement Fund), L.P. (the "Equitable Capital Partners I Partnerships") which are substantially identical to the

Equitable Capital Partners II Partnerships. The Equitable Capital Partners II Partnerships and the Equitable Capital Partners I Partnerships are hereinafter, collectively, the "Partnerships" and the limited partners of the Partnerships are hereinafter, collectively, the "Limited Partners." This Declaration is provided in support of the statement at pages 28-30 of the Petition with respect to the requirements under the securities laws of several states that the Partnerships provide the Limited Partners with the right to remove the general partners (the "General Partners") of the Partnerships and elect their successors as set forth in Section 11 of the respective Partnership Agreements.

4. The Partnerships are each Delaware limited partnerships which are regulated as business development companies under the Investment Company Act of 1940, as amended. The offering by the Partnerships of their respective limited partnership interests (the "Interests") is subject to regulatory oversight and review, on the federal level under the federal securities laws, by the Securities and Exchange Commission (the "SEC") and, on the state level under the various state securities or "blue sky" laws, by the securities administrators of the various states in which offers and sales of the Interests are made. Before sales of the Interests to the public may be effected, registration of the Interests must be effective with the SEC and the various states in which the offering is made.

5. In determining whether to permit a registration application to become effective, many state securities administrators apply the Guidelines to offerings of real estate programs and, by analogy, to public offerings of other limited partnership interests. The Subcommittee on Real Estate Programs has published its 1989 Annual Survey of State Implementation and Application of the Current NASAA Real Estate Guidelines, dated March 1, 1989, which concludes that at least 39 states have affirmed their adoption of the Guidelines either formally or informally or adoption of similar guidelines for public offerings of limited partnership interests. Further, in recent telephone conversations, securities administrators in more than fifteen states including Arizona, Arkansas, California, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Texas, Virginia, and Washington, have confirmed to me that they would seek